

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----X  
SIRIUS XM RADIO INC.,

Plaintiff,

v.

Case No. 12-cv-02259 (TPG)

SOUNDEXCHANGE, INC. and AMERICAN  
ASSOCIATION OF INDEPENDENT MUSIC,

Defendants.  
-----X

**~~PROPOSED~~ STIPULATION OF AGREED SETTLEMENT AND DISMISSAL**

WHEREAS, Plaintiff, Sirius XM Radio Inc. ("Sirius XM"), has filed a Complaint against Defendants SoundExchange, Inc. ("SoundExchange") and American Association of Independent Music's ("A2IM") alleging that Defendants have engaged in certain acts that violate Sections 1 & 2 of the Sherman Act, and constitute tortious interference;

WHEREAS, Defendants filed motions to dismiss the Complaint for failure to state a claim and a decision on those motions is pending;

WHEREAS, Defendant SoundExchange is a nonprofit organization with its principal place of business located at 733 10th St., N.W., 10th Floor, Washington DC, 20001;

WHEREAS Defendant A2IM and Plaintiff Sirius XM agreed to a Stipulation of Agreed Settlement and Dismissal, which was approved and so ordered by the Court on January 31, 2013 (Docket No. 33);

WHEREAS Plaintiff Sirius XM and Defendant SoundExchange, by and through its respective attorneys, have consented to the entry of this Stipulation and Settlement without trial or adjudication of any issue of fact or law, and this Stipulation and Settlement shall not be evidence against or an admission by any party regarding any issue of fact or law or except with

respect to any proceeding commenced to enforce any provision of this Stipulation and Settlement;

WHEREAS Defendant SoundExchange expressly disclaims any liability or wrongdoing of any kind, including that it has ever engaged in any of the conduct described in Paragraph B below, and is entering into this Stipulation and Settlement solely to avoid additional expenses of litigation and without admitting or acknowledging any liability whatsoever;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon the consent of the parties, it is AGREED:

- A. The parties recognize that SoundExchange is free to express its opinions about Sirius XM and any proposals or terms for licensing with Sirius XM, to advocate for or against such issues, and to express agreement or disagreement with the opinions of others concerning such issues.
- B. The parties recognize that each owner of a copyright in a sound recording is entitled to decide for itself whether or not to enter into a direct license with Sirius XM. Accordingly, SoundExchange will not act inconsistently with Sections 1 or 2 of the Sherman Act, 15 U.S.C. §§ 1-2, in connection with a copyright owner's decision to enter into a direct license with Sirius XM. Thus, for example, SoundExchange will not organize or knowingly participate in any agreement whose purpose is to preclude a copyright owner from entering into a direct license with Sirius XM.
- C. Nothing in this Agreement shall preclude SoundExchange from exercising any rights permitted under 17 U.S.C. § 114.
- D. The Complaint is dismissed with prejudice.

Dated: March 12, 2015

SOUNDEXCHANGE, INC.

By: 

Richard L. Stone  
Jenner & Block, LLP  
633 West 5th Street, Suite 3600  
Los Angeles, CA 90071-2054  
Tel: (213) 239-2203  
Fax: (213) 239-2213

Michael B. DeSanctis  
Jenner & Block, LLP  
1099 New York Ave., N.W.  
9<sup>th</sup> Floor  
Washington DC, 20001  
Tel: (202) 637-6323  
Fax: (202) 661-4828

*Counsel for SoundExchange, Inc.*

SIRIUS XM RADIO INC.

By: 

Steven A. Reiss  
Eric S. Hochstadt  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153-0119  
Tel: (212) 310-8000  
Fax: (212) 310-8007

*Counsel for Sirius XM Radio Inc.*

APPROVED AND SO ORDERED:



Hon. Thomas P. Griesa  
United States District Judge  
3/13/15

